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IN THE

Supreme Court of the United States

October Term, 1960

No. [illegible]

SYNANON FOUNDATION, INC., CHARLES E. DEDERICH, ADALINE AINLAY, and JESSE W. PRATT,

Appellants.

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT.

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SUBJECT INDEX

	PAGE
Opinion below	1
Jurisdiction	2
The statute challenged	3
Questions presented	3
Statement	7
The questions presented are substantial	9
A. Section 11391 of the California Health and Safety Code insofar as it refers to "an addict" is fatally vague and uncertain	9
B. Section 11391 of the California Health and Safety Code, insofar as it purports to proscribe "treatment" in this case, is fatally vague and uncertain and constitutes an unwarranted infringement of appellants' freedoms of conscience, assembly, and self determination	13
1. It is vague and uncertain	13
2. It is an unwarranted infringement of freedom	15
C. The judgment of conviction is fatally vague and uncertain	16
Conclusion	17
Appendices:	
Appendix A—Text of statutes involved	App. p. 1
Appendix B—Copies of judgments below	App. p. 2

TABLE OF AUTHORITIES CITED

CASES

Crane v. Johnson, 242 U. S. 339, 61 L. Ed. 348 16

Follett v. Town of McCormick, 321 U. S. 573, 88 L. Ed. 938 15

Lanzetta v. New Jersey, 306 U. S. 451, 83 L. Ed. 888 ..... 2, 10, 12, 15

People v. Jaurequi, 142 Cal. App. 2d 555 10

People v. Jordan, 172 Cal. 391 16

People v. Thompson, 144 Cal. App. 2d (Supp.) 854 9

Scull v. Commonwealth of Virginia, 359 U. S. 344, 3 L. Ed. 2d 865 ..... 2, 17

Thomas v. Collins, 323 U. S. 516, 89 L. Ed. 430 15

United States v. Peck, 154 Fed. Supp. 603 16

Watkins v. United States, 354 U. S. 178, 1 L. Ed. 2d 1273 16

West Virginia State Board v. Barnette, 319 U. S. 624, 87 L. Ed. 1628 15

STATUTES

California Health and Safety Code, Sec. 9105 ..... 6, 7

California Health and Safety Code, Sec. 9105A 7

California Health and Safety Code, Sec. 11009 9

California Health and Safety Code, Sec. 11390 4

California Health and Safety Code, Secs. 11390-11396 9

California Health and Safety Code, Sec. 11390.5 4

California Health and Safety Code, Sec. 11391 ..... 3, 4, 5, 6, 7, 9, 10, 12, 16

California Health and Safety Code, Sec. 11392 4

California Health and Safety Code, Sec. 11393 5

California Health and Safety Code, Sec. 11394 ..... 5, 10

PAGE

California Health and Safety Code, Sec. 11395..... 5

California Health and Safety Code, Sec. 11721..... 11

United States Code Annotated, Title 28, Sec. 1257(2).....2, 17

United States Constitution, First Amendment..... 15

United States Constitution, Fourteenth Amendment.....5, 6, 15

TEXTBOOKS

20 Federal Probation (Dec. 1956), p. 39, Chapman, Drug Addicts—The General Problem..... 9

Krutch, The Measure of Man, p. 38 (Bobbs-Merrill, 1953).... 15

Law and Contemporary Problems (Winter 1957), pp. 10, 16, Winick, Narcotics Addiction and Its Treatment..... 14

Law and Contemporary Problems (Winter 1957), pp. 11, 14, 24, Winick, Narcotics Addiction and Its Treatment..... 11

McAdoo, When the Court Takes Recess (Dutton, 1924), p. 42..... 14

1 University of California at Los Angeles Law Review (1954), pp. 405, 442, Prosser, The Narcotics Problem....9, 13

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SYNANON FOUNDATION, INC., CHARLES E. DEDERICH, ADALINE AINLAY, and JESSE W. PRATT,

Appellants.

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

JURISDICTIONAL STATEMENT.

Appellants appeal from the final order made and entered on July 22, 1960, by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, affirming their conviction by the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, made and entered on April 4, 1960, and from the order of said Appellate Department, made and entered on August 2, 1960, denying their Petition for Rehearing.

Opinion Below.

Opinions were written by neither the trial court, the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, nor the appeal court from which the case comes, the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

Jurisdiction.

On August 28, 1959, the People of the State of California filed their complaint herein in the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, charging Appellants with, among other things, violation of section 11391 of the California Health and Safety Code and section 9105 of the Santa Monica Municipal Code. The matter came on for trial on February 8, 1960, and, thereafter, on April 4, 1960 a judgment of conviction on said charges was made and entered.

On April 4, 1960, Appellants filed their Notice of Appeal of said conviction to the Appellate Department of the Superior Court of the State of California in and for the County of Los Angeles. Thereafter, the case was briefed and argued, and, on July 22, 1960, said Court made and entered its order affirming said conviction. Thereafter, on July 29, 1960, Appellants duly petitioned to have the matter reheard by the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, but said petition was on August 2, 1960, denied. Thereafter, on October 28, 1960, Appellants filed their Notice of Appeal to this Honorable Court in the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles.

The statutory provision believed to confer jurisdiction over this Appeal upon this Court is title 28 U. S. C. A. section 1257(2). The cases believed to sustain said jurisdiction are *Lanzetta v. New Jersey*, 306 U. S. 451, 83 L. Ed. 888 (1939); and *Scull v. Commonwealth of Virginia*, 359 U. S. 344, 3 L. Ed. 2d 865 (1959).

The Statute Challenged.

The Appellants by this Appeal challenge the constitutionality of section 11391 of the California Health and Safety Code (West's California Codes) which reads as follows:

> "No person shall treat an addict for addiction except in one of the following:
>
> (a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control.
>
> (b) A city or county jail.
>
> (c) A state prison.
>
> (d) A state narcotic hospital.
>
> (e) A state hospital.
>
> (f) A county hospital.
>
> This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age."

Questions Presented.

The following questions are presented by this appeal:

1. Is Section 11391 of the Health and Safety Code of the State of California, which reads:

> "No person shall treat an *addict* for addiction except one of the following:
>
> (a) An institution approved by the Board of Medical Examiners, and where the patient is at at all times kept under restraint and control.
>
> (b) A city or county jail.
>
> (c) A state prison.

(d) A state narcotic hospital.

(e) A state hospital.

(f) A county hospital.

This section does not apply during emergency treatment or where the patients addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age." (Emphasis added.)[1]

fatally vague and uncertain insofar as it refers to "addicts," and thus unconstitutional under the Fourteenth

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[1]Below, appellants contended that, in its context in the California Health and Safety Code, Section 11391 was misconstrued by the trial court. Such contention cannot, of course, be raised in this Court. It would appear, however, that the wording and evident purpose and effect of the surrounding Health and Safety Code sections bear upon the question whether Section 11391 is vague and uncertain. These sections read as follows:

11390. "Any narcotic employed in treating an addict for addiction shall be administered by a physician, or by a registered nurse acting under his instruction."

11390.5 "No physician or other person shall order, permit or direct any person other than a registered nurse, or other physician, to administer a narcotic to a person being treated for narcotic addiction."

11391. "No person shall treat an addict for addiction except in one of the following:

(a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A state narcotic hospital.

(e) A state hospital.

(f) A county hospital.

This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age."

11392. "A physician treating an addict for addiction shall not prescribe for or furnish the addict more than any one

Amendment to the Constitution of the United States and unenforceable, where it is attempted to be invoked against a group of former habitual narcotics users who have banded together for mutual help and support and have successfully forsworn narcotics?

2. Is Section 11391 of the California Health and Safety Code an unconstitutional exercise of the police power under the Fourteenth Amendment, and/or fatally vague and uncertain, where it is invoked to prohibit,

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of the following amounts of narcotics during each of the first 15 days of such treatment:

(a) Eight grains of opium.
(b) Four grains of morphine.
(c) Six grains of Pantopon.
(d) One grain of Dilaudid.
(e) Four hundred milligrams of Isonipecaine (Demerol).
(f) One hundred eighty milligrams of Amidone."

11393. "After 15 days of treatment the physician shall not prescribe for or furnish to the addict more than any one of the following amounts of narcotics during each day of such treatment.

(a) Four grains of opium.
(b) Two grains of morphine.
(c) Three grains of Pantopon.
(d) One-half grain of Dilaudid.
(e) Two hundred milligrams of Isonipecaine (Demerol).
(f) Ninety milligrams of Amidone.".

11394. "At the end of thirty days from the first treatment, the prescribing or furnishing of narcotics shall be discontinued."

11395. "The physician treating an addict for addiction shall within five days after the first treatment report by registered mail, over his signature, to the State division, stating the name and address of the patient, and the name and quantities of narcotics, if any, prescribed.

The report shall state the progress of the patient under the treatment.

The physician shall in the same manner further report on the fifteenth day of the treatment and on the thirtieth day of the treatment, and thereafter shall make such further reports as are requested in writing by the State division."

as "treatment,"[2] the mere banding together for mutual aid and support of former habitual narcotics users who have forsworn narcotics? As it purports to regulate such persons is Section 11391 an unwarranted infringement of their freedom of conscience, freedom of assembly, and right of self determination?

3. Is a single judgment of conviction for two totally separate and different crimes which suspends imposition of sentence for a two-year period of prohibition on the condition that defendants *"not violate any law, City, County, or State, and discontinue use of (their) premises."*

fatally vague and uncertain under the Fourteenth Amendment to the Constitution of the United States where:

(a) A large amount of evidence was adduced to prove a large number of activities by defendants of the premises, some of which were unique and some commonplace;

(b) One of the statutes under which they were prosecuted and convicted (*i.e.*, California Health and Safety Code Section 11391) is subject to varying interpretations and has not been previously construed or applied in similar or even analogous situations and the other is a zoning ordinance, also previously unconstrued;[3]

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[2]See footnote 1, *supra*.

[3]The conviction for violation of the zoning ordinance was under Count V of the complaint. The ordinance was section 9105 of the Santa Monica Municipal Code, and appellee claimed appellants were operating a "hospital", which was not permitted in the zone

(c) The trial court has issued no conclusions of law as to the statute's interpretation in the circumstances and which of the defendants' many activities is prohibited and which it did not; and

(d) The trial court has made no findings of fact as to what defendants actually did do, let alone what they did which made them guilty under the statute?

In other words, is a conviction where the court suspends sentence on the condition defendants break no law valid when the defendants are left totally in the dark as to how to avoid breaking the law?

Statement.

The questions presented are substantial. Appellant Synanon Foundation Inc. is a California Non-Profit Corporation. It leases and maintains a three-story building in the city of Santa Monica. It is supported by charitable contributions, having been designated a tax exempt organization by the U. S. Treasury Depart-

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in which their building was located. Section 9105 read as follows:

> Section 9105. "Except as provided otherwise in this chapter no owner, occupant, tenant, lessee or other person, firm or corporation hereafter shall:
>
> Section 9105A. "Erect, reconstruct, alter, enlarge, move or maintain any building, structure or functional adjunct nor use, design or intend to use any building, structure, functional adjunct or land for any purpose or in any manner other than is permitted by this chapter in the district in which such building, structure, functional adjunct or land is located and then only after applying for and securing all permits and licenses required by law."

Appellants do not appeal the conviction under Section 9105. That section and the conviction thereunder is only pertinent herein in that the trial court's judgment under Count V is inextricably interwoven with the judgment under Count III for violation of California Health and Safety Code, Section 11391.

ment. Appellants Dederich, Ainlay, and Pratt were at the time complaint was filed directors of the Corporation.

The evidence showed that some fifty persons were living in said three-story building at the time the complaint was filed, that said persons had formerly been addicted to narcotics, and that they had not used narcotics for considerable periods of time.

The evidence further showed that the purpose of Synanon Foundation Inc. and the residents of said building was to achieve complete rehabilitation from narcotic addiction of said persons and such other persons as might follow them there in the future. At all times the residents of said building were free to leave. At no time were they given medication of any sort or medical or psychiatric therapy for their affliction, the philosophy and practice of the organization being that such rehabilitation is to be achieved only by the will power of the individual reinforced by the moral support of the group.

The record further discloses that the "Synanon method" has been considerably more effective than accepted methods for coping with the problems of narcotic addiction and the rehabilitation of ex-addicts.

The Federal questions sought to be reviewed here were first raised by brief, and later argued orally, in the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles. Said Court affirmed Appellants' conviction without opinion, apparently deciding their contentions were without merit.

The Questions Presented Are Substantial.

The constitutional questions presented are far from academic. If the judgment stands, some sixty residents of Synanon in various stages of rehabilitation will be forced to disband. Synanon has been most effective in rehabilitating former narcotics users [Record, Engrossed Statement on Appeal, p. 26, lines 12-14]; and it cannot be questioned that, if Synanon is disbanded, a number of former users who are not sufficiently rehabilitated to eschew narcotics by themselves will backslide and that of this number some will go to jail and some will die.[4]

A. Section 11391 of The California Health and Safety Code Insofar as It Refers to "an Addict" Is Fatally Vague and Uncertain.

For the purposes of Health and Safety Code Section 11391 "An Addict" is said to be:

> ". . . A person who unlawfully uses, or is addicted to the unlawful use of, narcotics."
>
> California Health and Safety Code, Sec. 11009.

It has been stated judicially in California that Section 11009 makes it clear:

> ". . . that the legislature has given an artificial meaning to 'addict,' for it has put the label not alone on one who is addicted, but also one who is an unlawful user even though he is not an addict . . ."
>
> *People v. Thompson*, 144 Cal. App. 2d (Supp.) 854, 857 (1956).

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[4]All accepted methods of treating addiction (including institutionalized gradual withdrawal as prescribed by sections 11390-11396 of the California Health and Safety Code) are frankly conceded to be unsuccesful. See: Prosser, "The Narcotics Problem" (1954), 1 UCLA L. Rev. 405, 442; and Chapman, "Drug Addicts—The General Problem," 20 Fed. Probation 39, Dec. 1956.

The record is devoid of any evidence that Synanon harbored "users." Consequently, the conviction must rest upon its having treated persons who were "addicted to the unlawful use of narcotics."

It is undisputed that Synanon members had formerly used and been addicted to narcotics. Indeed, the *raison d' etre* of Synanon was, and is, to provide a place for such persons. It is also undisputed that no member of Synanon was using narcotics, and there was not even evidence or claim that on or about August 28, 1959, any member was in any stage of "cold turkey" withdrawal and, thus, to any extent still under the "influence" of narcotics. Further, it was undisputed that each Synanon member had forsworn narcotics and that he could leave Synanon any time he wanted.

Does the term addict as defined in Section 11009 and used in Section 11391 include such persons? The code does not tell us. Nor do the cases. Nor does any "demonstrable established technical or common law meaning of the language in question."

Cf.:

Lanzetta v. New Jersey, 306 U. S. 451, 83 L. Ed. 888 (1939).

In California it *is* established that addiction is a chronic condition of status. *People v. Jaurequi*, 142 Cal. App. 2d 555 (1956). But *nowhere* in the statutes, cases, or texts are we told *when* that condition or status may be deemed to come to and end, *i.e.*, how long a habitual user must eschew narcotics before he will no longer be considered an addict. That question is crucial in the instant case.

To illustrate the vague and indefinite nature of the word "addict" in the context of the present case, we list a number of points in the history of one who travels the road from being an habitual user to cure where it *could* be said "addiction" ceases:

(1) When he is locked up without access to any more narcotics.

(2) When he determines to stop.

(3) When he reaches the stage where narcotics have been withdrawn completely under the State prescribed treatment. (*I.e.*, thirty days after treatment begins. Health and Safety Code Section 11394).

(4) When withdrawal symptoms end. (*I.e.*, ten to fifteen days from use under "cold turkey" method.)

Winick, "Narcotics Addiction and its Treatment," Law and Contemporary Problems, Winter 1957, page 11.

(5) Three months from use. (The minimum sentence for addiction under Health and Safety Code, Section 11721.)

(6) Six months from use. (Average period required to regain physical normality. Winick, op. cit. p. 14.)

(7) Eighteen months from use. (Rule of thumb in some federal institutions. Winick, op. cit. p. 24.)

(8) When the convicted addict's sentence has run.

(9) When the convicted addict is paroled.

(10) When the hospitalized addict is released from the hospital.

(11) After a number of years have passed and it is statistically unlikely he will go back to narcotics. (Whose statistics do we use here?)

(12) When in the opinion of a board of medical doctors he is cured. (Where is the board?)

(13) When in the opinion of a board of psychiatrists he is cured. (Again, where is the board?)

(14) When he dies. (*I.e.*, he is never cured.)

(15) When a character change occurs which significantly increases the probability of his not going back to narcotics.

No evidence was adduced by the people regarding the length of time any individual resident of Synanon had been free of narcotics. Obviously, the members of Synanon would still have been "addicts" on August 28, 1959 by Standard Number 14. As to the others, there was no evidence. The law does not appear to prefer any of these, or other, possible standards for determining when addiction ends. Concededly, the nature of addiction makes it difficult to select any standard, and one premised on the lapse of time alone would be unrealistic. Nevertheless, if the status of addiction is to be an element of a crime, the law should recognize and enunciate *some* point when the status of being an addict does come to and end. Since the statutes and cases of California leave the matter wholly up in the air, appellant's conviction under Health and Safety Code, Section 11391, must fall. *Lanzetta v. New Jersey, supra.*

B. Section 11391 of The California Health and Safety Code, Insofar as It Purports to Proscribe "Treatment" in This Case, Is Fatally Vague and Uncertain and Constitutes an Unwarranted Infringement of Appellants' Freedoms of Conscience, Assembly, and Self Determination.

1. *It Is Vague and Uncertain.*

The record shows the philosophy and practice of Synanon is that craving and dependence upon narcotics can be overcome by will power—and will power alone—and that will power can be developed by the individual with sufficient moral support and understanding. This philosophy is neither very new nor very startling. Narcotics Anonymous and Addicts Anonymous, both organized along the lines of Alcoholics Anonymous, have long been recognized to supply this necessary help where institutionalized techniques have failed. (See: Prosser, "The Narcotics Problem," (1954) 1 UCLA L. R. 405, 442.) And as long ago as 1924 the Chief City Magistrate of New York City, who had seen, sentenced, and followed the case histories, of thousands of narcotic addicts had this to say:

> ". . . Above and beyond all medical treatment which largely consists of purging the system of the poison and then bettering physical condition, there must positively be sympathetic effort to get the drug out of the addict's mind as well as out of the body. What would I do if I had a son who was an addict? I would give him my own companionship at any sacrifice, and if that were not possible I would find, if it could be done, someone who would gain his confidence and respect, and who would enter heartily into giving him the moral and

mental support he would require until he dragged himself out of the quicksands and got his feet again on firm earth . . ." (McAdoo, "When the Court Takes Recess" (Dutton 1924) p. 42.)

The Synanon philosophy and practice concerns the development of will power. It deals in that indefinable, but very real, area of the will, the spirit, or the soul. That such an area exists is sometimes forgotten. We live in a scientific age, and medical and psychological science have overrun the whole area of human affliction, including the problem of narcotic addiction.

"The study of drug addiction represents almost a classic instance in which different social science and medical disciplines have each emphasized one facet of a complex problem. Anthropologists see addiction as a cultural complex, sociologists report a situation in which learning takes place, psychologists look for individual differences in addicts, physiologists observe a drug's specific bodily effects, psychoanalysts note a pregenital personality structure, statisticians relate addiction to times of depression and war, psychiatrists find prepsychotic characteristics, experimentalists are worried about lack of control groups and addict research . . ." (Winick, "Narcotics Addiction and Its Treatment," Law and Contemporary problems, Winter 1957, 10, 16.)

With it, this scientism, and particularly the psychological sciences, has brought what at least one commentator has denominated a "philosophy of exculpation" whereby the individual is not only not to blame for his transgressions or weaknesses but is deemed to be incapable of preventing his future transgressions and con-

tinuing weaknesses by the force of his own will. (Krutch, "The Measure of Man," p. 38, Bobbs-Merrill, 1953.) According to this view of the scheme of things such things as narcotics addiction can only be coped with by means of medical or psychiatric treatment.

The word "treatment" ordinarily implies just such a scientific course of medication or therapy, and a healer and patient, in the traditional sense. A statute which, without legislative warning or judicial precedent, willy nilly comprehends non-medical, non-scientific activity such as Synanon's under a tortured and expanded definition of the word "treament" can only be deemed unconstitutionally vague and uncertain.

Lanzetta v. New Jersey, supra.

If the California legislature desires to take it upon itself to *prescribe* the *sole* method for dealing with drug addiction and the rehabilitation of former drug users, it should do so in no uncertain terms.

2. *It Is an Unwarranted Infringement of Freedom.*

As a matter of method, or philosophy, the Synanon method is something which is clearly beyond the cognizance, control, or regulation of the State of California, because:

(1) Even though it is not a religion, it is in that area which is preferred and protected by the First and Fourteenth Amendments of the Federal Constitution (*W. Va. State Board v. Barnette*, 319 U. S. 624, 87 L. Ed. 1628 (1943); *Follet v. Town of McCormick*, 321 U. S. 573, 88 L. Ed. 938 (1944); *Thomas v. Collins*, 323 U. S. 516, 89 L. Ed. 430 (1945); *Watkins v. United States*, 354

U. S. 178, 1 L. Ed. 2d 1273 (1957); *United States v. Peck*, 154 Fed. Supp. 603 (1957));

(2) The evidence demonstrates it presents no clear and present danger to anyone. (The facts that many members were on parole and that they were more apt to stay "clean" living together at Synanon, rather than singly, demonstrate this beyond peradventure.); and

(3) At worst, it can do no harm. (See and compare: *People v. Jordan* (1916), 172 Cal. 391 and *Crane v. Johnson* (1917), 242 U. S. 339, 61 L. Ed. 348.)

C. The Judgment of Conviction Is Fatally Vague and Uncertain.

By combining the judgments of conviction under Counts III and V and granting probation on the condition Appellants "not violate any law . . ." the trial court compounded, and brought to bear on Appellants, all of the vagueness and uncertainty of Health and Safety Code Section 11391, placing Appellants in an intolerable position.

The trial court, in effect, told Appellants they had done something wrong and, if they did it again, they were going to jail. *But it never did tell them what it was they did wrong.*

Short of suspending *all* activity whatsoever, how can Appellants guide themselves so as not to violate probation? How could they go about changing their operation to make it lawful? What statutory or other requirements should they comply with in order to be legally sanctioned? And how could such a judgment even be properly reviewed by the State Appellate Court other than very generally?

In the circumstances the judgment itself must be held invalid because of its vagueness and uncertainty.

Scull v. Commonwealth of Virginia, 359 U.S. 344, 3 L. Ed. 2d 865 (1959).

Indeed, it is submitted the judgment is *arbitrarily* vague and uncertain.

Conclusion.

Wherefore, it is respectfully submitted that this Court has jurisdiction of this appeal under Section 1257(2), Title 28, United States Code.

Respectfully submitted,

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ANTHONY LIEBIG,
VINCENT CAVANAGH,
By ROBERT W. KENNY,
Attorneys for Appellants.

APPENDIX A.

Text of Statutes Involved.

"No person shall treat an addict for addiction except in one of the following:

(a) An institution approved by the Board of Medical Examiner, and where the patient is at all times kept under restraint and control.

(b) A city or county jail.

(c) A state prison.

(d) A state narcotic hospital.

(e) A state hospital.

(f) A county hospital.

This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age."

Section 11391 of the California Health and Safety Code (West's California Codes).

APPENDIX B.

Copies of Judgments Below.

JUDGMENT OF THE MUNICIPAL COURT OF SANTA MONICA JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, IN THE CASE OF PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, V. SYNANON FOUNDATION INC., ET AL., DEFENDANTS.

"April 4, 1960—2 P.M. Cause called: Judge H. P. Baida presiding. Defendants Charles E. Dederich, Adaline Ainlay and Jesse W. Pratt present with counsel, Vincent Cavanagh. Motion made by attorney Vincent Cavanagh for a new trial on the grounds the court erred in deciding questions of law arising during the course of the trial, as under subdivisions 4, 5, 6, of Section 1181 Penal Code, and finding defendants guilty of counts 3 and 5 of complaint contrary to law and evidence. Motion denied by the court. Defendants ready for sentence.

As to defendant Charles E. Dederich: It is hereby ordered that proceedings be suspended without imposition of sentence for the period of probation hereinafter set forth, and that summary probation be granted for a period of two years on the following terms and conditions: Deft. not to violate any law, City, County or State and to discontinue use of the premises by May 10, 1960.

As to defendant Adaline Ainlay: It is hereby ordered that proceedings be suspended without imposition of sentence for the period of probation hereinafter set

forth, and that summary probation be granted for a period of two years on the following terms and conditions: Deft. not to violate any law, City, County or State and to discontinue use of the premises by May 10, 1960.

As to defendant Jesse W. Pratt: It is hereby ordered that proceedings be suspended without imposition of sentence for the period of probation hereinafter set forth, and that summary probation be granted for a period of two years on the following terms and conditions: Deft. not to violate any law, City, County or State and to discontinue use of the premises by May 10, 1960.

As to the Corporation: It is hereby ordered that proceedings be suspended without imposition of sentence for the period of probation hereinafter set forth, and that summary probation be granted for a period of two years on the following terms and conditions: Deft. not to violate any law, City, County or State and to discontinue use of the premises by May 10, 1960.

Attorney Vincent Cavanagh makes a motion for a stay of execution. Motion denied without prejudice. Attorney Vincent Cavanagh gives oral notice of Appeal and files written Notice of Appeal."

JUDGMENT OF THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AFFIRMING THE JUDGMENT OF THE MUNICIPAL COURT OF SANTA MONICA JUDICIAL DISTRICT, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, IN THE CASE OF PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF AND RESPONDENT, V. SYNANON FOUNDATION, INC., ET AL., DEFENDANTS AND APPELLANTS, JULY 22, 1960, HONORABLE FRANK G. SWAIN, JUDGE PRESIDING, HONORABLE HAROLD P. HULS, ASSOCIATE JUDGE, HONORABLE A. CURTIS SMITH, ASSOCIATE JUDGE.

"On Appeal from the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California: This cause having been argued and submitted and fully considered, judgment is ordered as follows: It is Ordered and Adjudged that the order granting probation and order denying motion for new trial made and entered in the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, in the above entitled cause be and the same are hereby affirmed."

ORDER OF THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, DENYING APPELLANTS' PETITION FOR REHEARING IN THE CASE OF PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF, AND RESPONDENT, V. SYNANON FOUNDATION, INC., ET. AL., DEFENDANTS AND APPELLANTS, AUGUST 2, 1960, HONORABLE HAROLD P. HULS, ACTING PRESIDING JUDGE, HONORABLE A. CURTIS SMITH, ASSOCIATE JUDGE.

"The petition of appellants for a rehearing after judgment of this court on appeal in the above-entitled case having been filed and having been duly considered; Said petition is hereby denied."

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FILED
JAN 14 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. 607

[redacted], [redacted] and [redacted],

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

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SUBJECT INDEX

PAGE

The questions presented 2

I.

No substantial federal question is presented by this appeal 4

A. The modern trend in criminal statutes is a "rule of reason" 4

B. Is the term "addict" fatally vague and uncertain? 5

C. Is the term "treat" an unconstitutional exercise of the State police power, fatally vague and uncertain, or an infringement of appellants' freedoms of conscience, assembly, and self-determination? 8

(1) It is not an unconstitutional exercise of the State police power 8

(2) It is not fatally vague and uncertain 10

(3) It is not an infringement of appellants' freedoms of conscience, assembly, and self-determination 11

D. Is the judgment fatally vague and uncertain? 11

II.

The judgment and order herein rest on an adequate non-federal basis 12

III.

Conclusion 13

TABLE OF AUTHORITIES CITED

CASES — PAGE

Frye, Ex parte, 143 Tex. Crim. Rep. 9, 156 S. W. 2d 531.... 5
Graves v. Minn., 272 U. S. 425, 47 S. Ct. 122, 71 L. Ed, 331 5
Lorensen v. Superior Court, 35 Cal. 2d 49, 216 P. 2d 859.... 5
Miller v. Board of Public Works, 195 Cal. 47, 234 Pac. 381 9
Pacific Coast Dairy v. Police Court, 214 Cal. 668, 8 P. 2d 140, 80 A. L. R. 1217 4
Stembridge v. Georgia, 343 U. S. 541 12

TEXTBOOKS

14 American Jurisprudence, Sec. 19, pp. 773-774 4
Cooley's Constitutional Limitations (8th Ed.), p. 371 5
Drug Addiction, by Ausubel; Random House, 1958, p. 80 9
Journal of Chronic Diseases, "Management and Treatment of Drug Addiction," March, 1959, p. 316 8
171 Journal of the American Medical Association, p. 518, October 3, 1959 9
74 Public Health Reports, p. 760, "Addiction Liability and Narcotics Control," by Nathan B. Eddy, M.D., and Harris Isbell, M.D., September, 1959 8
The Medical Clinics of North America, "The Treatment of Drug Addiction," by Marie Nyswander, M.D., May, 1958, p. 819 ..... 9, 10

RULES

Revised Rules of the United States Supreme Court (1959 Pocket Supplement), Rule 16 1

STATUTES

California Health and Safety Code, Sec. 9105 ..... 2, 4, 6, 11, 13
California Health and Safety Code, Sec. 11721 ..... 3, 4
California Health and Safety Code, Sec. 11391 ..... 2, 7, 8, 11, 13
California Health and Safety Code, Secs. 11390-11396 10
United States Constitution, Fourteenth Amendment 3

IN THE

Supreme Court of the United States

October Term, 1960

No. .....

SYNANON FOUNDATION, INC., CHARLES E. DEDERICH, ADALINE AINLAY, and JESSE W. PRATT,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

MOTION TO AFFIRM THE JUDGMENT AND/OR DISMISS THIS APPEAL.

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States (1959 Pocket Supplement), moves that the judgment and order of the Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, rendered and entered on the 22nd day of July, 1960 (rehearing thereon was denied the 2nd day of August, 1960), be affirmed, and/or that the appeal taken therefrom to the above entitled court be dismissed.

The said motion to affirm the judgment or dismiss this appeal is made upon the following grounds:

(1) That the appeal herein does not present a substantial federal question;

(2) That the judgment and order rest on an adequate non-federal basis;

(3) That the entire appeal is moot inasmuch as the appellant is only appealing from one of two criminal convictions, thus permitting the probationary sentence to remain, regardless of any action to be contemplated by this appeal.

THE QUESTIONS PRESENTED.

The appellant was charged upon a misdemeanor complaint filed in the Municipal Court of the Santa Monica Judicial District, County of Los Angeles, State of California, with, among other things, violation of Section 11391 of the California Health and Safety Code, and Section 9105 of the Santa Monica Municipal Code. After trial, appellants were found guilty of the said two counts.

At Footnote 3 of appellant's Jurisdictional Statement is the statement that he does not appeal his conviction of Section 9105 of the Santa Monica Municipal Code, which charged him with a violation of the zoning law, to wit: Using his building as a hospital and sanitarium in an R-4 zone, wherein such use is not permitted.

Therefore, this appeal is only from the conviction under Section 11391 of the California Health and Safety Code, which reads as follows:

> "No person shall treat an addict for addiction except in one of the following:
>
> (a) An institution approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control.

(b) A city or county jail

(c) A state prison

(d) A state narcotic hospital

(e) A state hospital

(f) A county hospital

This section does not apply during emergency treatment or where the patient's addiction is complicated by the presence of incurable disease, serious accident, or injury, or the infirmities of old age."

Appellant does not contend he is within one of the above six designated classes.

Therefore, the following questions are presented:

A. Is the term "addict," as contained in Section 11391 ~~11721~~ of the California Health and Safety Code, fatally vague and uncertain so as to be violative of the Fourteenth Amendment to the Constitution of the United States?

B. Is the term "treat," as contained in Section ~~11721~~ 11391 of the California Health and Safety Code, and as applied to appellants in the instant case,

(1) An unconstitutional exercise of the state police power?

(2) Fatally vague and uncertain?,

(3) An infringement of appellants' freedoms of conscience, assembly, and right of self-determination?

C. Is a judgment fatally vague and uncertain so as to be violative of the Fourteenth Amendment of the Constitution of the United States where appellant is

convicted of Section ~~11721~~ 11391 of the California Health and Safety Code, *and* Section 9105 of the Santa Monica Municipal Code, and where the trial court orders that "proceedings be suspended without imposition of sentence for the period of probation hereinafter set forth, and that summary probation be granted for a period of two years on the following terms and conditions: (Appellant) not to violate any law, City, County or State, and to discontinue use of the premises by (May 10, 1960)"[1]?

I.

No Substantial Federal Question Is Presented by This Appeal.

A. The Modern Trend in Criminal Statutes Is a "Rule of Reason."

The general rules as to sufficiency of the statement of a statutory crime are well understood. In 14 Am. Jur., "Criminal Law," Section 19, pages 773-774, is the statement:

> "The legislature, in the exercise of its power to declare what shall constitute a crime or punishable offense, must inform the citizen *with reasonable precision* what acts it intends to prohibit, so that he may have an understandable rule of conduct, and to know what acts it is his duty to avoid. . . . Every uncertainty, however, which may exist in the operation of a criminal statute does not render it void." (Emphasis added.) (Citing *Pacific Coast Dairy v. Police Court*, 214 Cal. 668, 8 P. 2d 140, 80 A. L. R. 1217.)

[1]See: Minutes of Trial Court.

It is a recognized rule of construction as stated in *Ex parte Frye*, 143 Tex. Cr. R. 9, 156 S. W. 2d 531, 533:

> "Every presumption is in favor of the constitutionality of an act of the legislative body of a state and the courts will not declare it invalid unless, in their judgment, it clearly and unmistakably comes within the inhibition of the Constitution." (*Cooley's Const. Lim.*, 8th Ed., Vol. I, page 371; *Graves v. Minn.*, 272 U. S. 425, 47 S. Ct. 122, 71 L. Ed. 331, and other cases cited.)

In *Lorensen v. Superior Court*, 35 Cal. 2d 49 (216 P. 2d 859), defendant and others were charged with conspiracy to commit certain named crimes and "to pervert and obstruct justice or the due administration of the laws." On denying a contention that the quoted part was void for uncertainty and ambiguity, the court states:

> "To comply with the constitutional requirement of due process of law the crime for which a defendant is being prosecuted must be clearly defined. It is only necessary that the words used in the statute be well enough known to enable those persons within its reach to understand and correctly apply them. 'To make a statute sufficiently certain to comply with constitutional requirements it is not necessary that it furnish detailed plans and specifications of the acts or conduct prohibited.'"

B. Is the Term "Addict" Fatally Vague and Uncertain?

On page 8 of his Jurisdictional Statement, appellant states that of the fifty residents living in his premises at the time of filing the Complaint, "said persons had

formerly been addicted to narcotics, and that they had not used narcotics for considerable periods of time." (Emphasis added.) This is a misconstruction of the evidence. Of 200 persons treated by appellant for narcotics addiction, 75% came into Synanon from off the street while under the influence of narcotics or while in the beginning stages of withdrawal from narcotics.[2]

Again, on page 8 of his Jurisdictional Statement is this statement: "At no time were they given . . . medical or psychiatric therapy for their affliction. . . ." This conclusion is not supported by the evidence. See Engrossed Statement. Further, implicit in appellant's failure to appeal from his conviction of Section 9105 of the Santa Monica Municipal Code (using his building as a hospital and sanitarium, in violation of the zoning law), is the tacit admission that therapy of the type to be obtained in a hospital and sanitarium is, in fact, administered, and that there is competent evidence in the record to support such a conviction.

At the third full paragraph of page 8 of his Jurisdictional Statement, appellant states, ". . . the 'Synanon method' has been considerably more effective than accepted methods for coping with the problems of narcotic addiction. . . ." It appears on the one hand that appellant denies "treating addicts for addiction," and on the other hand claims great success for *coping* with the problems of *narcotic addiction.*

At page 10 of his Jurisdictional Statement, is the statement that, ". . . there was not even evidence

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[2]Engrossed Statement, page 4, lines 19-29.

or claim that on or about August 28, 1959, any member was in any stage of 'cold turkey' withdrawal and, thus, to any extent still under the 'influence' of narcotics." This conclusion, similarly, is nowhere to be found in the evidence. Defense witness, Dr. Casselman, a medical doctor, an expert in narcotic addiction, was family physician for appellant during August, 1959. He saw from fifty to one hundred fifty persons under the influence of narcotics come into appellants' building for the purpose of undergoing withdrawal from narcotics.[3]

The evidence is clear that, on the date alleged in the Complaint, numerous persons resided in appellants' premises, at a time during which they were under the influence of narcotics, and that such testimony is supported by appellants' own narcotic expert witness. To suggest that persons currently under the influence of narcotics are not addicts requires reasoning beyond the ken of mortal man or jurisprudence.

Appellant, at page 11 of his Jurisdictional Statement, cites a total of fifteen interpretations of when addiction ceases, to support his thesis that the term "addict," as used in Section 11391 of the California Health and Safety Code is fatally vague and uncertain.

It is submitted that no matter what standard is used to test when addiction ends, it is a fact that addiction *exists*, and one *is* an addict, *so long as* narcotics are in that person's system and so long as that person has a *craving* for narcotics; that is, narcotic addiction is

[3]Engrossed Statement, page 21, lines 3-9.

both an *emotional and a physical state* that exists in a human body.

> "Drug addiction may be defined as a state of periodic or chronic intoxication produced by the repeated consumption of a drug. . ." ("Addiction Liability and Narcotics Control," *74 Public Health Reports 760*, by Nathan B. Eddy, M.D., and Harris Isbell, M.D., September, 1959.) "The theory generally accepted is that . . . narcotic drugs alter the physical chemistry of the neuronal structures." ("Management and Treatment of Drug Addiction," *Journal of Chronic Diseases*, page 316, March, 1959.)

C. Is the Term "Treat" an Unconstitutional Exercise of the State Police Power, Fatally Vague and Uncertain, or an Infringement of Appellants' Freedoms of Conscience, Assembly, and Self Determination?

(1) It is Not an Unconstituional Exercise of the State Police Power.

Does California have a legitimate right, under its police power, to legislate and limit the places in which narcotic addicts may be treated for addiction? Section 11391 of the California Health and Safety Code limits such treatment to jails, prisons, state narcotic hospitals, or other institutions ". . . approved by the Board of Medical Examiners, and where the patient is at all times kept under restraint and control." It is to be noted that the legislative intent was to confine narcotic treatment centers to those places of security where the patient/inmate can be kept under restraint and control during his withdrawal from narcotics.

The treatment of addicts for addiction, both in a medical and in a legislative sense, requires that the patient be kept under control and restraint so as to protect himself, his attendants, and society from the addict himself as he commences withdrawal.

"Even under the best conditions, however, withdrawal is a disagreeable experience. Patients become hostile, resistive, and often threaten to leave. Hysterical outbursts are not uncommon, and suicidal attempts are sometimes made."

("The Treatment of Drug Addiction," *The Medical Clinics of North America,* by Marie Nyswander, M.D., May 1958, page 819.)

"Finally, the regulation of withdrawal treatment requires experienced physicians and attendants trained in the observation and evaluation of abstinence syndromes. In certain cases (cardiac decompensation, tuberculosis, general debility) excessively abrupt withdrawal may result in death."

(*"Drug Addiction,"* Ausubel, Random House, 1958, page 80.)

California has a legitimate interest in the narcotic problem and may validly legislate therein.

"Four states currently contain 77% of known addicts: New York (45%), Illinois (14%), *California (13%),* and Michigan (5%)." (Emphasis added.) (*171 Journal of the American Medical Association 518,* October 3, 1959.)

As was said in *Miller v. Board of Public Works,* (1925), 195 Cal. 477, 234 Pac. 381:

"The (police) power is elastic; its scope changes with social and economic progress, and in its exer-

cise the Legislature and the courts continually apply new views of what constitutes new legislation for the preservation of the public peace, safety, morals, health, and general welfare."

(2) It Is Not Fatally Vague and Uncertain.

The record indicates that numerous persons go to appellants' premises while under the influence of narcotics or in various stages of withdrawal therefrom. Once admitted, the patient is given a regimented and thorough step-by-step course of therapy. There is no allegation that appellant administers narcotics as part of the method of therapy. Instead, he takes his addict-patients through sudden and complete withdrawal (the "cold-turkey" system), during which time the patient is physically and emotionally bolstered, and after which a form of psycho-therapy is commenced. It is clear that the "cold-turkey" method of withdrawl is recognized as a method of attacking addiction.

> "The three methods of drug withdrawal are: (1) *abrupt withdrawal of all narcotics, known as 'cold turkey'*; (2) abrupt withdrawal with substitution of a drug as apomorphine or insulin; and (3) gradual withdrawal with use of morphine or methadone as a substitute drug." (Emphasis added.)
>
> ("The Treatment of Drug Addiction," by Marie Nyswander, M.D., *The Medical Clinics of North America*, May, 1958, page 819.)

It is submitted that Sections 11390-11396 of the California Health and Safety Code concern certain re-

quirements for *treatment* of addicts for addiction whether that treatment be by *any* of the above three methods or means of drug withdrawal.

(3) It Is Not an Infringement of Appellants' Freedoms of Conscience, Assembly, and Self-Determination.

As above indicated, California has a legitimate interest under its police powers in regulating the places in which narcotic addicts are treated.

D. Is the Judgment Fatally Vague and Uncertain?

In its judgment, the trial court told appellants they had treated addicts for addiction in a place not specified in Section 11391 of the California Health and Safety Code, and that they had used their building as a hospital and sanitarium in a zone wherein such uses are not permitted under Section 9105 of the Santa Monica Municipal Code. Rather than impose sentence, the trial court placed appellants on two years' summary probation on condition they not violate any laws during the term of probation, and that they vacate their building by a date certain.

The only conduct proscribed by the terms of probation is similarly proscribed to all good citizens: Do not violate any laws.

II.

The Judgement and Order Herein Rest on an Adequate Non-Federal Basis.

The Appellate Department of the Superior Court of the State of California, in and for the County of Los Angeles, which constitutes the final court of appeal from the Municipal Court judgment of conviction and order denying motion for a new trial, rendered its judgment in the instant case without a written opinion.

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 547-549, the following statement is found:

> "Where the highest court of the State delivers an opinion and it appears that the judgment might have rested upon a non-federal ground, this court will not take jurisdiction to review the judgment." (Citing numerous cases.)

The record in the instant case presents the identical consideration, as the record shows that the State appeal raised various non-federal grounds upon which the appellate judgment may have rested.

III.
Conclusion.

It is respectfully submitted that the judgment and order appealed from be affirmed and the appeal therefrom dismissed, for the following reasons:

1. The appeal presents no substantial Federal question.
2. The decision appealed from might have rested upon adequate non-federal grounds.
3. The entire appeal is moot inasmuch as appellant fails to appeal from his conviction under Section 9105 of the Santa Monica Municipal Code; thus his probationary sentence would remain in force and effect despite any action to be contemplated by this appeal from the Conviction under Section 11391 of the California Health and Safety Code.

Respectfully submitted,

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